

Federal Communications Commission

DA 97-1891

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 97-194
Table of Allotments,)	RM-9128
FM Broadcast Stations.)	
(Shelley and Island Park, Idaho))	

NOTICE OF PROPOSED RULE MAKING

Adopted: August 27, 1997

Released: September 12, 1997

Comment Date: November 3, 1997

Reply Comment Date: November 18, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Woodcom, Inc. ("petitioner"), permittee of a new FM station to operate on Channel 300C at Shelley, Idaho (File No. BPH-950123MH), seeking the substitution of Channel 292C1 for Channel 300C at Shelley, and modification of its authorization to specify operation on the lower class channel. Additionally, petitioner seeks the substitution of Channel 300C for Channel 293C at Island Park, Idaho, for which an application is pending,¹ to accommodate the Shelley substitution request. Petitioner states its intention to apply for Channel 292C1 if it is allotted to Shelley, as requested.

2. In support of its proposal, petitioner advises that it desires to locate the transmitter for the proposed station at Shelley at an existing, developed electronics site. In this manner, petitioner advises that the construction of another tall tower in the area could be avoided, thereby minimizing environmental, aeronautical and esthetic impacts. In further support of its request, petitioner advises that Channel 300 cannot be utilized at the desired electronics site in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. Further, petitioner advises that Channel 300C may be substituted for Channel 293C at Island Park, Idaho, at the transmitter specified by the sole applicant at that community.

3. A staff review of the proposal reveals that Channel 292C1 can be substituted for Channel 300C at Shelly, consistent with the technical requirements of the Commission's Rules, utilizing the petitioner's specified site located 42.3 kilometers (26.3 miles) southwest of the community at coordinates 43-06-45 and 112-29-34. Additionally, we have confirmed petitioner's

¹Alpine Broadcasting, Ltd. has filed a first-come/first-served application to operate on Channel 293C at Island Park, Idaho, specifying coordinates at 44-10-31 and 111-25-47 (File No. BPH961023MJ).

assertion that Channel 300C can be substituted for Channel 293C at Island Park, Idaho, at the transmitter site specified in the pending application at that community.

4. In light of the above, we will propose to modify the petitioner's authorization (File No. BPH950123MH) to specify operation on Channel 292C1 at Shelley, Idaho, in lieu of Channel 300C.² Additionally, we will send a copy of this *Notice of Proposed Rule Making* to Alpine Broadcasting, Ltd. ("Alpine"), the applicant for Channel 293C at Island Park. In the event Channel 300C is substituted for Channel 293C at Island Park, the applicant will be allowed to amend its application without loss of cut-off protection. However, in view of Alpine's applicant status at this time, it is not entitled to any reimbursement. See *Pacific Grove and Soledad, California*, 5 FCC Rcd 6700, 6701 N.5 (1990).

5. In consideration of the foregoing, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Island Park, Idaho	293C	300C
Shelley, Idaho	300C	292C1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before November 3, 1997, and reply comments on or before November 18, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

David Tillotson, Esq.
4606 Charleston Terrace, N.W.
Washington, DC 20007

²Channel 288C1 can also be allotted to Shelley to accommodate any competing expression of interest which may be filed. Channel 288C1 can be allotted to Shelley consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, utilizing the city reference location at coordinates 43-22-42 and 112-07-12.

8. Further, IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Notice of Proposed Rule Making* by REGISTERED MAIL, RETURN RECEIPT REQUESTED, to the applicant for Channel 293C at Island Park, Idaho, as follows: Alpine Broadcasting, Ltd., 4350 N. Fairfax Dr., Suite 900, Arlington, VA 22203.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the

Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.